

# ESSAY

## THE CYCLE OF VIOLENCE: DOMESTIC VIOLENCE AND ITS EFFECTS ON CHILDREN

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## I. INTRODUCTION

“Children are exposed to violence every day in their homes, schools, and communities. They may be struck by a boyfriend, bullied by a classmate, or abused by an adult. They may witness an assault on a parent or a shooting on the street. Such exposure can cause significant physical, mental, and emotional harm with long-term effects that can last well into adulthood.

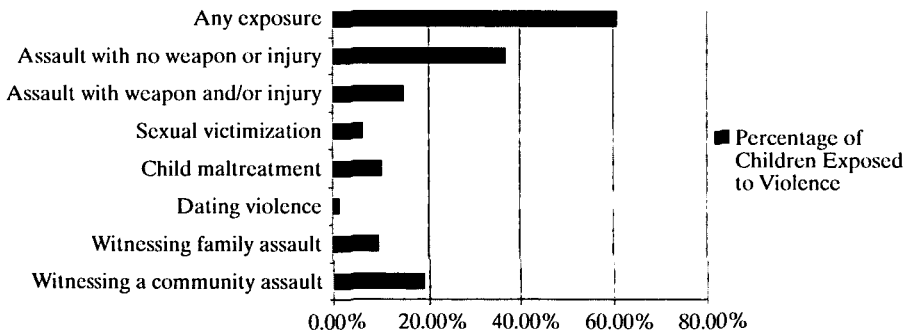
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Understanding the nature and extent of children’s exposure to violence is essential to combating its effects.”<sup>1</sup>

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1. OFFICE OF JUV. DELINQ. AND PREVENTION, *A Message From OJJDP*, JUV. JUST. BULLETIN, Oct. 2009, at 1, available at <http://www.ncjrs.gov/pdffiles1/ojjdp/227744.pdf>. While family violence affects both men and women significantly, perpetrators of domestic violence have a tendency, in large part, to be male. See Molly J. Walker Wilson, *An Evolutionary Perspective on Male Domestic Violence: Practical and Policy Implications*, 32 AM. J. CRIM. L. 291, 292 (2005).

Past-Year Exposure to Selected Categories of Violence for All Children Surveyed



(Graph adapted from David Finkelhor, *Children’s Exposure to Violence: A Comprehensive National Survey*, JUV. JUST. BULLETIN, Oct. 2009, at 4, available at <http://www.ncjrs.gov/pdffiles1/ojjdp/227744.pdf>).

Violence is a pervasive problem in the United States<sup>2</sup> and domestic violence is a significant contributing factor to the widespread issue of youth violence.<sup>3</sup> Violence in the home erodes the family structure, leading to further violence and abuse.<sup>4</sup> This Essay will explore the complex phenomenon of domestic violence and youth violence through analysis of the ongoing cycle of abuse. Frequent exposure to violence distorts an individual's personality, making the individual more likely to become violent and abusive.<sup>5</sup> Children who witness violence often suffer from immediate and long-term effects that can sometimes be life-threatening.<sup>6</sup> This Essay will analyze the dynamics of intimate partner violence and its effects on children living in violent homes.

Children exposed to violence are more likely to perpetuate the cycle of violence through future violent victimization or violent behavior.<sup>7</sup> Un-

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2. See FEDERAL BUREAU OF INVESTIGATION, VIOLENT CRIME 1 (Sept. 2010), <http://www2.fbi.gov/ucr/cius2009/documents/violentcrimemain.pdf> (providing statistics of violent crime in the United States). The FBI estimates approximately 1.3 million incidents of violent crime, with an estimated 429.4 violent crimes occurring per 100,000 individuals in 2009. *Id.*

3. NAT'L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FACTS (July 2007), [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (explaining the consequences and effects of domestic violence on children); see Annie Lewis-O'Connor et al., *Children Exposed to Intimate Partner Violence*, in CHILDREN EXPOSED TO VIOLENCE 3, 11 (Margaret M. Feerick & Gerald B. Silverman eds., 2006) (discussing the impact that intimate partner violence has on children, with differing effects on boys and girls).

4. CINDY L. MILLER-PERRIN & ROBIN D. PERRIN, CHILD MALTREATMENT: AN INTRODUCTION 88 (2d. ed. 2007) (identifying how violence from adults in the context of family leads to hardships and tension). Compared to non-violent parents, violent parents are likely to "engage in fewer positive interactions with their children, such as playing together, providing positive responses to their children, and demonstrating affection." *Id.*

5. See AM. ACAD. OF CHILD AND ADOLESCENCE PSYCHIATRY, UNDERSTANDING VIOLENT BEHAVIOR IN CHILDREN & ADOLESCENTS, FACTS FOR FAMILIES 1 (Mar. 2001), available at [http://www.aacap.org/galleries/FactsForFamilies/55\\_understanding\\_violent\\_behavior\\_in\\_children\\_and\\_adolscents.pdf](http://www.aacap.org/galleries/FactsForFamilies/55_understanding_violent_behavior_in_children_and_adolscents.pdf) (explaining the source of violent behavior in children). Violent behavior is not just limited to physical contact, but can be expressed in many ways, including aggression, verbal threats, temper tantrums, and animal cruelty. *Id.*

6. Audrey E. Stone & Rebecca J. Fialk, *Criminalizing the Exposure of Children to Family Violence: Breaking the Cycle of Abuse*, 20 HARV. WOMEN'S L.J. 205-07 (1997) (detailing how children process the abuse in their homes and integrate it into their world view); see also *Effects of Domestic Violence on Children*, STOP VIOLENCE AGAINST WOMEN, [http://stopvaw.org/effects\\_of\\_domestic\\_violence\\_on\\_children.html](http://stopvaw.org/effects_of_domestic_violence_on_children.html) (last updated Apr. 2010).

7. Audrey E. Stone & Rebecca J. Fialk, *Criminalizing the Exposure of Children to Family Violence: Breaking the Cycle of Abuse*, 20 HARV. WOMEN'S L.J. 205, 205-07 (1997) (explaining the "ripple effect" of violence through generations when children are exposed to abuse); NAT'L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FACTS (July 2007), [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf) (stating an effect of exposure to violence in the home either through direct or indirect abuse).

derstanding commonalities of violent individuals is crucial in effectively addressing violence.<sup>8</sup> This Essay will discuss predictive biological factors and environmental processes that increase an individual's chance of becoming violent. This Essay will also discuss the general problem of violence in the United States and Texas through analysis of both the juvenile and adult criminal systems.

Rates of reoffending for adults and juveniles, both nationally and in Texas, may help shed light on the shortcomings of the current system and provide insight on how to better combat the ongoing cycle of violence.<sup>9</sup> For example, approximately half of all juvenile delinquents and adult offenders reoffend after committing a first offense, thereby remaining in the criminal system.<sup>10</sup> This Essay will examine various recidivism statistics and other rates of violence to demonstrate the cyclical nature of violence and abuse. This Essay also provides suggestions for legal reformation that may provide a more effective means of addressing the cycle of violence in the United States and in Texas.

## II. DOMESTIC VIOLENCE OVERVIEW: THE CYCLE OF ABUSE

Intimate violence is a widespread, multi-faceted problem among adults and teens.<sup>11</sup> Victims of domestic violence often remain in the abusive

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8. Mark H. Moore & Michael Tonry, *Youth Violence in America*, 24 CRIME & JUST. 1, 3, 8 (1998).

9. Cf. David P. Farrington & Brandon C. Welsh, *A Half Century of Randomized Experiments on Crime and Justice*, 34 CRIME & JUST. 55, 57 (2006).

10. Kristin Bechtel et al., *Assessing the Risk of Re-Offending for Juvenile Offenders Using the Youth Level of Service/Case Management Inventory*, 45 J. OFFENDER REHABILITATION 85, 95–96 (2007), available at [http://www.uc.edu/ccjr/Articles/Risk\\_of\\_Reoffending\\_YLSCMI.pdf](http://www.uc.edu/ccjr/Articles/Risk_of_Reoffending_YLSCMI.pdf).

11. CENTERS FOR DISEASE CONTROL AND PREVENTION, UNDERSTANDING INTIMATE PARTNER VIOLENCE 1 (2009), available at [http://www.cdc.gov/violenceprevention/pdf/IPV\\_factsheet-a.pdf](http://www.cdc.gov/violenceprevention/pdf/IPV_factsheet-a.pdf) (noting the severity of intimate partner violence in the United States); CENTERS FOR DISEASE CONTROL AND PREVENTION, UNDERSTANDING TEEN DATING VIOLENCE 1 (2010), available at [http://www.cdc.gov/violenceprevention/pdf/TeenDatingViolence\\_2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/TeenDatingViolence_2010-a.pdf) (describing dating violence as “a type of intimate partner violence”); see Jessica Ramos, Comment, *Defining Violence on the Blackboard: An Overview of the Texas Education Code's Approach to Teen Dating Violence*, 13 SCHOLAR 105, 107 (2010) (discussing the different problems teenagers and adults experience from intimate violence). In essence, teen violence victims differ from adults because teen dating partners “usually do not cohabit, have children together, nor are economically dependent on each other.” Jessica Ramos, Comment, *Defining Violence on the Blackboard: An Overview of the Texas Education Code's Approach to Teen Dating Violence*, 13 SCHOLAR 105, 107 (2010). Furthermore, the number of violent incidents involving teenagers each year is one in four, which may be “verbal, physical, emotional, or sexual” in nature. *Id.* at 109. However, there is a difference between the frequency and kind of abuse a teenager suffers in an abusive relationship. *Id.* With a dating partner, only “ten percent of teenage girls reported

relationship for a variety of underlying reasons, such as the victim's learned co-dependency and the escalated risk of violence if the victim threatens to leave the batterer.<sup>12</sup> Many victims of intimate violence are trapped in this ongoing cycle of abuse.<sup>13</sup>

One theory of intimate violence adopts the idea of "learned helplessness"—a feeling of powerlessness resulting from the poor self-esteem an individual develops after repeated batterings, and continuous "failed attempts at leaving the relationship."<sup>14</sup> Although this three-phase theory was used to explain adult abusive relationships, it may also apply to teen dating violence.<sup>15</sup> The first phase is the "tension building phase," where minor incidents leave the victim trying to appease the abuser when he or she becomes violent.<sup>16</sup> If victim of abuse is unsuccessful, he or she may

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being physically beaten . . . while over twenty-one percent reported being sexually assaulted." *Id.*

12. Jessica Ramos, Comment, *Defining Violence on the Blackboard: An Overview of the Texas Education Code's Approach to Teen Dating Violence*, 13 SCHOLAR 105, 108 (2010); see MICHAEL P. JOHNSON, A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE 7 (Claire Renzetti ed., 2008) (expanding on the factors that tend to keep a victim in an abusive relationship). Coercion is at the base of abusive relationships whether the abuse manifests physically, emotionally, sexually, or in the form of property destruction. Christine N. Carlson, *Invisible Victims: Holding the Educational System Liable for Teen Dating Violence at School*, 26 HARV. WOMEN'S L.J. 351, 361 (2003). The cycle of violence affects both adults and teens, but teens may have more drastic experiences because their situation is often governed by exaggerated stereotypes and misconceptions on acceptable gender roles. *Id.* at 365.

13. Jessica Ramos, Comment, *Defining Violence on the Blackboard: An Overview of the Texas Education Code's Approach to Teen Dating Violence*, 13 SCHOLAR 105, 108 (2010); see MICHAEL P. JOHNSON, A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE 7-8 (Claire Renzetti ed., 2008) (identifying the methods of control an abuser typically uses, which is usually "embedded in a general pattern of power and control"). One of the methods involves economic abuse, which includes exerting control over a victim's finances. MICHAEL P. JOHNSON, A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE 8 (Claire Renzetti ed., 2008). Male privilege may explain many methods of control an abuser uses—the abuser sees himself as the primary authority that *should* have control. *Id.* A possible aspect of control can include children, wherein the abuser manipulates the child or children against the victim, or even the victim's attachment to the child/children. *Id.* Isolation of the victim is another possibility, where the abuser ensures the victim "has no one to talk to about what's happening." *Id.* at 8-9. Finally, an abuser can ensure obedience intimidating them. *Id.* at 9.

14. Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CALIF. L. REV. 423, 432 (1994) (citing LENORE E. WALKER, THE BATTERED WOMAN 55 (1979)).

15. *Id.*; cf. LENORE E. WALKER, THE BATTERED WOMAN 56 (1979) (applying Lenore Walker's theory of "learned helplessness" to victims of teenage dating violence).

16. Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CALIF. L. REV. 423, 432 (1994) (citing LENORE E. WALKER, THE BATTERED WOMAN 56 (1979)). In this phase, as the tension escalates, the couple's

feel at fault for it, in essence, taking on part "of the responsibility for [the perpetrator's] abusive behavior."<sup>17</sup> In phase two, the tensions from phase one culminate, resulting in more severe beatings.<sup>18</sup> In phase three, the batterer backs down, asking for forgiveness, "persuading the woman not to take legal action," and promising to change.<sup>19</sup> Those women that stay generally do so because they believe they are the only "bridge to their men's emotional well-being."<sup>20</sup>

Each year, approximately two to six million women in America suffer as a result of domestic violence.<sup>21</sup> Additionally, approximately 25–30% of women who go to an emergency room are there solely because of domestic violence.<sup>22</sup> According to the July 2000 National Violence Against Women (NVAW) Survey, 22.1% of women have experienced a physical assault by a partner in their lifetime.<sup>23</sup> Roughly 25% of women told surveyors they had been "raped and/or physically assaulted" in their lifetime by an intimate partner or a date.<sup>24</sup> Separation assault is common in violent relationships as "the batterer's quest for control often becomes most

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coping mechanisms begin to fail them. LENORE E. WALKER, *THE BATTERED WOMAN* 59 (1979). The man becomes more possessive and brutal, resulting in a higher level of emotional and physical abuse. *Id.* This results in a back-and-forth between the batterer and the battered woman where the victim begins to withdraw from the emotional stress, while the batterer comes on stronger. *Id.*

17. Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CALIF. L. REV. 423, 432 (1994) (citing LENORE E. WALKER, *THE BATTERED WOMAN* 56 (1979)). There may come a point where the victim actually believes she deserves the abuse. LENORE E. WALKER, *THE BATTERED WOMAN* 56 (1979).

18. Kathryn E. Suarez, Comment, *Teenage Dating Violence: The Need for Expanded Awareness and Legislation*, 82 CALIF. L. REV. 423, 433 (1994) (citing LENORE E. WALKER, *THE BATTERED WOMAN* 59 (1979)).

19. *Id.* (citing LENORE E. WALKER, *THE BATTERED WOMAN* 65 (1979)).

20. *Id.* (citing LENORE E. WALKER, *THE BATTERED WOMAN* 68 (1979)). Women in phase three often believe that the behavior they see from their partner is his true self. LENORE E. WALKER, *THE BATTERED WOMAN* 68 (1979). This is the highest point in the relationship, so it is the most difficult time for her to make a decision to leave. *Id.* at 69. Even women who have been through several cycles may choose to stay because of the intense love they feel for their partner in this stage. *Id.* In relationships where the couple is married, tradition also plays an important role in shaping the woman's feelings about whether to stay—the woman may not want to be responsible for ending the marriage, something to her which is characterized by love and permanency. *Id.* at 66–67.

21. Rebecca Adams, *Violence Against Women and International Law: The Fundamental Right to State Protection from Domestic Violence*, 20 N.Y. INT'L L. REV. 57, 61 (2007).

22. MICHAEL P. JOHNSON, *A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE* 1 (Claire Renzetti ed., 2008).

23. PATRICIA TJADEN & NANCY THOENNES, U.S. DEP'T OF JUSTICE, *EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE* 13 (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

24. *Id.*

acutely violent and potentially lethal” when the woman threatens to leave the relationship.<sup>25</sup>

Domestic violence is rarely a single, isolated incident.<sup>26</sup> It is typically an ongoing process of violence and abuse.<sup>27</sup> According to one account, 41% of the surveyed victims of domestic violence reported that the batterer committed a re-assault during the thirty-month follow-up period.<sup>28</sup> The majority of re-assaults took place within six months of the first assault; 20% of abusers continued to re-assault the victim, causing more injuries.<sup>29</sup>

The ongoing cycle of abuse is detrimental to the victim and perhaps even more detrimental to the children living in that home.<sup>30</sup> Roughly three to seventeen million children are exposed to domestic violence each year.<sup>31</sup> Children exposed to domestic violence suffer serious immediate

25. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 5–6; MICHAEL P. JOHNSON, A TYPOLOGY OF DOMESTIC VIOLENCE: INTIMATE TERRORISM, VIOLENT RESISTANCE, AND SITUATIONAL COUPLE VIOLENCE 7 (Claire Renzetti ed., 2008) (illustrating the cycle of domestic violence which has power and control over another at the center).

26. PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE iii (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

27. *Id.* at iii–iv.

28. *Survey of Recent Statistics*, ABA COMM’N ON DOMESTIC VIOLENCE, <http://new.abanet.org/domesticviolence/Pages/Statistics.aspx> (last visited Oct. 11, 2010) (pointing out potential shortcomings of batterer treatment programs). Overall, batterer treatment programs are largely ineffective in preventing re-assaults post treatment. BILL WOODWARD & KRISTINE BECHTEL, UNDERSTANDING THE RESEARCH EVALUATING THE EFFECTIVENESS OF BATTERERS’ INTERVENTION PROGRAMS 2 (2008), available at <http://nicic.gov/Downloads/PDF/Library/023363>. Variables such as employment, residential stability, and individuals’ general preference for conformity contributed to the lower recidivism rates. *Id.* at 4; see, e.g., PETER LEHMANN & CATHERINE A. SIMMONS, STRENGTHS-BASED BATTERER INTERVENTION: A NEW PARADIGM IN ENDING FAMILY VIOLENCE (2009) (discussing different model approaches used by batterer treatment programs and advocating for a new strength-based paradigm approach); Edward Gondolf, *Reassault At 30-Months After Batterer Program Intake*, 44 INT’L J. OF OFFENDER THERAPY AND COMP. CRIMINOLOGY 111 (2000), available at <http://ijo.sagepub.com/content/44/1/111> (outlining the findings of extended term follow-ups on assaultive behavior).

29. *Survey of Recent Statistics*, <http://new.abanet.org/domesticviolence/Pages/Statistics.aspx> (last visited Sept. 24, 2010), ABA COMM’N ON DOMESTIC VIOLENCE; see also Edward W. Gondolf, *A 30-Month Follow-Up of Court-Referred Batterers in Four Cities*, 44 INT’L J. OF OFFENDER THERAPY AND COMP. CRIMINOLOGY 111 (2000), available at <http://ijo.sagepub.com/content/44/1/111> (using prior research studies to ascertain rates of re-assault).

30. Audrey E. Stone & Rebecca J. Fialk, *Criminalizing the Exposure of Children to Family Violence: Breaking the Cycle of Abuse*, 20 HARV. WOMEN’S L.J. 205, 205–07 (1997).

31. David Finkelhor, *Children’s Exposure to Violence: A Comprehensive National Survey*, JUV. JUST. BULLETIN, Oct. 2009, at 9, available at <http://www.ncjrs.gov/pdffiles1/ojjdp/>

and long-term consequences.<sup>32</sup> Exposure to domestic violence is detrimental to a child's well-being and development. The impact on a child living under continuous abuse is particularly devastating because it adversely affects the child's personality at the formative state.<sup>33</sup> Exposure to attacks on an adult slowly destroys the individual's personality, but the attacks experienced by a child can deform and reshape his or her personality entirely.<sup>34</sup> Children remaining in an environment inundated with abuse are faced with the unwholesome task of making compromises with their own judgment in an attempt to adapt and survive the abusive situation.<sup>35</sup> For example, the child "must find a way to preserve a sense of trust in people who are untrustworthy, safety in a situation that is unsafe, control in a situation that is terrifyingly unpredictable, [and] power in a situation of helplessness."<sup>36</sup> These unwholesome adaptations last the child a lifetime and assist in continuing the cycle, potentially bleeding into all aspects of their interpersonal relationships.

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227744.pdf. It has been difficult for researchers to develop an accurate measure of child witnesses due to the lack of comprehensive national surveys available on the issue. For example, the low estimate of three million only includes households with children under the age of three where parents are divorced or separated, while higher estimates of ten million was reported in a study that only considered responses from teens. Jeffrey L. Edleson, *Children's Witnessing of Adult Domestic Violence*, 14 J. INTERPERSONAL VIOLENCE 839, 842 (1999).

32. See Alan J. Tomkins et al., *The Plight of Children Who Witness Woman Battering: Psychological Knowledge and Policy Implications*, 18 LAW & PSYCHOL. REV. 137, 150 (1994) (citing TERRY DAVIDSON, CONJUGAL CRIME: UNDERSTANDING AND CHANGING THE WIFE BEATING PATTERN 116 (1978)) (discussing the long-term effects on children who witness violence). The children's initial experience of a marriage relationship is marred, and future experiences will be put in the context of the abusive relationship they witnessed between their mother and their father. *Id.*

33. See Pauline Quirion et al., Commentary, *Protecting Children Exposed to Domestic Violence in Contested Custody and Visitation Litigation*, 6 B.U. PUB. INT. L.J. 501, 508 (1997) (citing JUDITH L. HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR 96 (1992)).

34. See *id.* (citing JUDITH L. HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR 96 (1992)) (supporting the argument that domestic violence is so detrimental to a child that it should be persuasive evidence of parental unfitness when determining visitation and custody).

35. See *id.* (quoting JUDITH L. HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR 96 (1992)) (addressing the compromises that an abused child makes regarding personal relationships in a traumatic environment).

36. *Id.* (quoting JUDITH L. HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE—FROM DOMESTIC ABUSE TO POLITICAL TERROR 96 (1992)).



### A. *Exposure to Domestic Violence is Injurious to Children*

Even if the child is not a direct victim of abuse, research shows that witnessing domestic violence produces physical and mental results similar to those observed in maltreated children.<sup>37</sup> Extensive research and greater awareness have helped shed light on the injurious effects of domestic violence exposure.<sup>38</sup> Consequently, exposing children to domestic violence is “seen increasingly as a form of child maltreatment.”<sup>39</sup>

Children living in violent homes suffer both immediate and long-term effects such as trauma-related symptoms, depression, low self-esteem, and aggression.<sup>40</sup> They are also likely to suffer from unhealthy sleeping and eating habits as infants, exhibit aggressive and regressive behavior in school, and behave delinquently as teenagers.<sup>41</sup> The psychological impact

37. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 245 (1999) (categorizing the effect witnessing family violence has on children). Due to the high level of children who witness abuse and experience violence themselves, it is often times difficult to decipher what effect is caused by which trauma. *Id.* “The overlap between child abuse and domestic violence in the same family is significant. 40–60% of families who present with partner violence also report child abuse.” BOSTON MEDICAL CENTER, *For Caregivers: Myths and Facts*, CHILD WITNESS TO VIOLENCE PROJECT (2010), <http://childwitnessstoviolence.org/pmwiki.php?n=Main.FactsAmpMyths>.

38. See, e.g., CHRISTINE B. SIEGFRIED et al., NAT’L CHILD TRAUMATIC STRESS NETWORK, VICTIMIZATION AND JUVENILE OFFENDING 5 (2004), [http://www.nctsnet.org/nctsnet\\_assets/pdfs/edu\\_materials/victimization\\_juvenile\\_offending.pdf](http://www.nctsnet.org/nctsnet_assets/pdfs/edu_materials/victimization_juvenile_offending.pdf).

39. Heather Y. Swanston et al., *Juvenile Crime, Aggression and Delinquency After Sexual Abuse*, 43 BRIT. J. CRIMINOLOGY 729, 730 (2003) (citing CHILDREN LIVING WITH DOMESTIC VIOLENCE: PUTTING MEN’S ABUSE OF WOMEN ON THE CHILD CARE AGENDA (Audrey Mullender & Rebecca Morley eds., 1994); P. Parkinson & C. Humphreys, *Children Who Witness Domestic Violence—The Implications for Child Protection*, 10 CHILD & FAM. L.Q. 147–59 (1998)). Although certain types of maltreatment may influence the acts of specific crimes, as a general category, crimes committed by maltreated persons outweigh those committed by persons whom have not been subject to maltreatment. *Id.* at 732.

40. Alan J. Tomkins et al., *The Plight of Children Who Witness Woman Battering: Psychological Knowledge and Policy Implications*, 18 LAW & PSYCHOL. REV. 137, 145–50 (1994).

41. Min Kang, *Parents as Scapegoats*, 16 J. CONTEMP. LEGAL ISSUES 15, 16 (2007). Children in violent homes are deprived of proper bonding as infants with their parents because the parents are dealing with their own trauma instead of tending to the children. Audrey E. Stone & Rebecca J. Fialk, Recent Development, *Criminalizing the Exposure of Children to Family Violence: Breaking the Cycle of Abuse*, 20 HARV. WOMEN’S L.J. 205, 208 (1997). When infants cannot bond with their parents, they can suffer from developmental problems, which stem from an unstable environment. *Id.* Salt Lake City, Utah has taken parental responsibility to the next level by adopting an ordinance imposing criminal sanctions on parents who do not supervise or guide their children. Christine T. Greenwood, *Holding Parents Criminally Responsible for the Delinquent Acts of Their Children: Reasoned Response or “Knee-Jerk Reaction”?*, 23 J. CONTEMP. L. 401, 401 (1997)). Proponents of these laws assert that placing criminal liability on parents will reduce juvenile

on children living in violent homes can manifest itself as post-traumatic stress disorder (PTSD) or other psychiatric disorders, including dissociative disorders, anxiety, and mood disorders.<sup>42</sup> These children also have a tendency to exhibit suicidal ideation, increased levels of fear, unnatural passivity and dependency, as well as impulsivity and extreme crying.<sup>43</sup> Younger children generally suffer from poor health, insomnia, excessive screaming, frequent headaches, stomachaches, diarrhea, asthma, and peptic ulcers.<sup>44</sup> Accordingly, children exposed to family violence are "admit-

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delinquency as parents will have more control over their children. *Id.* at 411–12. However, because it is often the parent's actions of abusing or neglecting their children that create this type of behavior, others argue that these laws will make family relationships worse and increase delinquency. *Id.* Despite these conflicting views, it is undisputed that family has an important role in a child's development. *Id.* at 412.

42. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 248 (1999) (cataloging a variety of psychological disorders present in children who witness domestic violence). Several factors play a role in determining whether a child witness will develop PTSD, including: proximity to the act, the nature of the relationship with the victim and abuser, and fear for their own safety. *Id.* PTSD is manifested in individuals who are repeatedly exposed to traumatic events. Joseph S. Volpe, *Effects of Domestic Violence on Children and Adolescents: An Overview*, AM. ACAD. OF EXPERTS IN TRAUMATIC STRESS (1996), <http://www.aacts.org/article8.htm>. Traumatic events overwhelm a child's sense of safety and require them to develop unique coping mechanisms. *Id.* A diagnosis of PTSD requires a source of intense fear and repeated exposure to violence, as well as the child exhibiting avoidance to any of these reminders associated with the trauma. *Id.* Courts have considered evidence of PTSD in children who witness abuse to establish custody and protective orders in family law cases. *See, e.g., Elyashiv v. Elyashiv*, 353 F. Supp. 2d 394, 400 (E.D.N.Y. 2005) (holding that a father was not entitled to demand the return of his children to Israel after the court heard evidence of the children's PTSD acquired by observing the abuse of their mother and becoming victims of abuse themselves). Once children are placed in a stable environment and removed from the threat of further traumatic events, recovery from PTSD is possible. *See id.* at 401 (providing one example of children successfully recovering from PTSD).

43. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 248 (1999) (extrapolating on data from Jeffrey L. Edleson, *Children's Witnessing of Adult Domestic Violence*, 14 J. INTERPERSONAL VIOLENCE 839, 846 (1999) discussing the differences between externalized and internalized behavioral effects of child witnesses).

44. *Id.* at 246 (providing examples of the effects experienced by young witnesses to domestic violence). Not only does family violence affect children of all ages, reports also show that half of batterers abuse their wives while pregnant, leading to low birth weight and birth defects. *Id.*; *see also* Bonnie E. Rabin, *Violence Against Mothers Equals Violence Against Children: Understanding the Connections*, 58 ALB. L. REV. 1109, 1113 (1995) (explaining that abused children often provide the best insight into the dynamics of domestic violence). Because reporting domestic violence is often synonymous with the removal of the children from the violent environment, many individuals in these situations choose to endure the violence instead of making a report. Bonnie E. Rabin, *Violence Against Mothers Equals Violence Against Children: Understanding the Connections*, 58 ALB. L. REV. 1109, 1111 (1995).

ted to hospitals twice as often as other children, have an increased number of psychosomatic complaints, and are more frequently absent from school due to health problems.”<sup>45</sup> Furthermore, victims of abuse frequently turn to drug and alcohol abuse in order to cope with traumatic childhood events, which in turn can lead to the development of fatal diseases such as heart disease, lung cancer, and liver disease.<sup>46</sup>

### III. DOMESTIC VIOLENCE: A GATEWAY FOR CHILD AND SEXUAL ABUSE

Intimate partner violence is often accompanied by other forms of violence, such as child abuse and sexual abuse.<sup>47</sup> Statistics illustrate more than half of male aggressors will initiate child maltreatment in an effort to inflict further emotional harm on the initial target of their abuse.<sup>48</sup> BATTERERS may threaten to harm the children, intimidate the victim with threats of kidnapping the children, and follow through with these threats.<sup>49</sup> It is also worth noting that while men commit most child abuse,

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45. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 246 (1999).

46. William W. Harris et al., *In the Best Interests of Society*, 48 J. CHILD. PSYCHOL. & PSYCHIATRY 392, 394 (2007) (indicating that exposure to violence has many long-term effects on physical health and emotional well-being).

47. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 240–241, 247 (1999) (defining the scope of the problem of domestic violence). The term “domestic violence” in this context pertains to adult-to-adult violence intended to cause physical pain or injury. Jeffrey L. Edleson, *Children’s Witnessing of Adult Domestic Violence*, 14 J. OF INTERPERSONAL VIOLENCE 839, 844 (1999). This type of violence occurs across all socioeconomic groups and in a survey of 6,000 families as many as 70% of male spousal abusers also abused their children. Joseph S. Volpe, *Effects of Domestic Violence on Children and Adolescents: An Overview*, AM. ACAD. OF EXPERTS IN TRAUMATIC STRESS (1996), <http://www.aaets.org/article8.htm>. A study conducted in Florida reported that 27% of the domestic violence homicide victims were children. *Domestic Violence on Children*, NEW BEGINNINGS, [http://www.newbeginningsnh.org/html/dv\\_child.html](http://www.newbeginningsnh.org/html/dv_child.html) (last visited Oct. 6, 2010) (citing *Florida Mortality Review Protect*, FLORIDA GOVERNOR’S TASK FORCE ON DOMESTIC AND SEXUAL VIOLENCE 45 (1997)).

48. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 241 (1999) (developing the idea that male aggressors utilize both physical and psychological abuse techniques to dominate their victim).

49. *Id.* (discussing the relationship between violence against women and child abuse). Parental kidnapping includes “the taking, retention or concealment of a child by a parent, other family member, or their agent, in derogation of the custody rights, including visitation rights, of another parent or family member.” PATRICIA M. HOFF, ABA, PARENTAL KIDNAPPING: PREVENTION AND REMEDIES 6 (2000), available at <http://www.abanet.org/child/pkprevrem.pdf>. “More than half of the child abductions occur within the context of domestic violence.” *Children of Domestic Violence Statistics*, TURNING POINT, <http://www.turningpointservices.org/Domestic%20Violence%20-%20Children%20and%20Domestic>

women who are battered are significantly more likely than non-abused mothers to neglect or abuse their own children.<sup>50</sup> Thus, the child living in a domestic violence household has a high likelihood of becoming the target of the violence and abuse, and many children in such an environment sustain injuries when attempting to defend their mothers from the aggressor's attack.<sup>51</sup> In approximately "[70%] of cases where an abused child dies, there is ongoing domestic violence against the mother."<sup>52</sup> As noted previously, children who survive the ongoing abuse will still likely "suffer serious physical injuries, emotional trauma, or become future victims of abuse or perpetrators of violence against others."<sup>53</sup>

Batterers are also more likely to sexually abuse children living in the home.<sup>54</sup> For example, when a wife is being abused, the daughter's risk of being sexually abused increases six-fold.<sup>55</sup> Children exposed to domestic violence are also more likely to engage in sexual violence against

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%20Violence%20Statistics.htm (last visited Dec. 14, 2010). Abduction from domestic violence generally occurs under two contexts: (1) batterers take the children to harm the victims, and (2) victims flee with the children in an attempt to protect them from further violence. NAT'L CLEARINGHOUSE FOR THE DEF. OF BATTERED WOMEN, THE IMPACT OF PARENTAL KIDNAPPING LAWS AND PRACTICE ON DOMESTIC VIOLENCE SURVIVORS (Aug. 2005), available at <http://www.vaw.umn.edu/documents/pkreport/pkreport.html#id431272>.

50. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 241 (1999) (detailing the effects of battering on maternal child abuse and neglect).

51. See Pauline Quirion et al., *Protecting Children Exposed to Domestic Violence in Contested Custody and Visitation Litigation*, 6 B.U. PUB. INT. L.J. 501, 509-10 (1997) (providing examples of how children have been injured during domestic violence directed toward their mother). "In a thirty-six month study of 146 children ages eleven to seventeen who came from homes where domestic violence was a major problem, all of the sons over fourteen attempted to intervene and protect their mothers from attacks; sixty-two percent of the sons were injured in the process." *Id.* at 510.

52. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 247 (1999) (detailing the child abuse statistics in homes in which violence against a partner is recurrent).

53. Susan C. Smith, Comment, *Abused Children Who Kill Abusive Parents: Moving Toward and Appropriate Legal Response*, 42 CATH. U. L. REV. 141, 141 (1992) (demonstrating that the adverse impact of child abuse on a child's physical and mental well-being may result in parricide). An overwhelming sense of fear and insecurity stemming from repeated abuse may cause children to believe they are in "mortal danger." *Id.* at 154. It is this sense of helplessness that becomes the motivating factor in crimes against abusive parents. *Id.* Children who murder an abusive parent will initially experience a sense of security and relief; however, this is usually followed by confusion and in some cases, suicide. *Id.* at 155.

54. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 247 (1999).

55. *Id.*

others.<sup>56</sup> One study found that victims of domestic violence commit rape at a rate of twenty-four times higher than the general population.<sup>57</sup>

Witnessing domestic violence also perpetuates the cycle of violence.<sup>58</sup> Witnessing abuse by a father to a mother creates the greatest childhood risk-factor for perpetuating violence from generation to generation.<sup>59</sup> Boys who witness family violence learn to use violence as a means of conflict resolution, and girls “learn that victimization is inevitable . . . [and] that no one can alter the pattern of violence.”<sup>60</sup> Children who experience violence at home have a higher tolerance for accepting violence as an adult.<sup>61</sup> Thus, those who witness parental violence as a child are more likely to continue the cycle and abuse their partners.<sup>62</sup>

#### A. *Domestic Violence Teaches Children to Accept Violence in Intimate Relationships*

Growing up in a violent environment has a lasting impact on a child, permanently influencing his or her perspective and behavior throughout his or her lifetime.<sup>63</sup> The child of a violent family is often unable to develop appropriate coping methods and value systems needed to operate as an effective adult.<sup>64</sup> Additionally, “[t]hese children may not only learn

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56. See Cynthia Grant Bowman & Elizabeth Mertz, *A Dangerous Direction: Legal Intervention in Sexual Abuse Survivor Therapy*, 109 HARV. L. REV. 549, 594 (1996) (“[M]any abusers have themselves been sexually abused in childhood.”).

57. Leigh Goodmark, *From Property to Personhood: What the Legal System Should do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 251 (1999) (citing to a study which shows that domestic violence increases the likelihood of sexual assault crimes); Elena Salzman, *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention*, 74 B.U. L. REV. 329, 334 (1994) (citing Sarah M. Buel, *An Integrated Response to Family Violence: Effective Intervention by Criminal and Civil Justice Systems* 28 (1990) (on file with the Boston University Law Review)). *Children and Domestic Abuse: Effects on Children*, MUJERES LATINAS EN ACCIÓN, <http://www.mujereslatinasenaccion.org/Effects%20on%20Children%201.html> (last visited Dec. 21, 2010).

58. Audrey E. Stone & Rebecca J. Fialk, *Criminalizing the Exposure of Children to Family Violence: Breaking the Cycle of Abuse*, 20 HARV. WOMEN'S L.J. 205, 205 (1997) (examining the effect of spousal abuse on the children of the abused).

59. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 250–51 (1999) (detailing the serious and long-term consequences of domestic violence on family dynamics).

60. *Id.* (specifying the effects of domestic violence on children's attitudes and future behaviors).

61. Pauline Quirion et al., *Protecting Children Exposed to Domestic Violence in Contested Custody and Visitation Litigation*, 6 B.U. PUB. INT. L.J. 501, 513 (1997).

62. *Id.* (commenting on the psychological and behavioral impact on an adult who grew up in an environment of violence).

63. *Id.*

64. *Id.*

unhealthy attitudes towards sexuality and love, but they may also equate relating sexually to another person with rape, an expression of power or anger."<sup>65</sup>

Children's exposure to domestic violence teaches them that violence is an inevitable part of intimate relationships.<sup>66</sup> Exposure distorts a child's sense of love and sexuality.<sup>67</sup> It further teaches children that the use of aggression to control others and to resolve interpersonal conflict is an acceptable way to interact with others.<sup>68</sup> Research shows that battered women who were abused as children grow up to expect violence in their relationships.<sup>69</sup> One study revealed that 80% of women interviewed at shelters reported witnessing their father assault their mother.<sup>70</sup>

#### B. *Children Exposed to Domestic Violence are More Likely to Become Violent*

In addition to the increased risk for future violent victimization, children exposed to domestic violence are also more likely to become perpetrators of violence against others.<sup>71</sup> One study conducted by the Massachusetts Department of Youth Services found that "children from violent homes are 74% more likely to commit crimes against the person" and "five times more likely to be delinquent as those from the general population."<sup>72</sup> Furthermore, children who have seen their mothers get

65. *Id.* at 513-14.

66. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 250 (1999) (addressing one of the most prevalent results of being subject to domestic violence as a child). This holds especially true because children learn violent behavior from their role models and not merely strangers off the street. See Alan J. Tompkins et al., *The Plight of Children Who Witness Woman Battering: Psychological Knowledge and Policy Implications*, 18 LAW & PSYCHOL. REV. 137, 138-39 (1994) (discussing the effects of domestic violence on children witnesses).

67. Pauline Quirion et al., *Protecting Children Exposed to Domestic Violence in Contested Custody and Visitation Litigation*, 6 B.U. PUB. INT. L.J. 501, 513 (1997).

68. *Id.*

69. See Richard C. Reuben, *The Forgotten Victims: New A.B.A. Domestic Violence Program Reaches Out to Children*, 82 MAY-A.B.A. J. 104, 104 (1996) (explaining the American Bar Association's educational initiative aimed at children who experience domestic violence).

70. Alan J. Tompkins et al., *The Plight of Children Who Witness Woman Battering: Psychological Knowledge and Policy Implications*, 18 LAW & PSYCHOL. REV. 137, 151 (1994) (citing PETER E. JAFFE ET AL., CHILDREN OF BATTERED WOMEN 21 (1990)). For those women not in shelters, only one-third reported witnessing violence in their childhood. *Id.*

71. Pauline Quirion et al., *Protecting Children Exposed to Domestic Violence in Contested Custody and Visitation Litigation*, 6 B.U. PUB. INT. L.J. 501, 510 (1997).

72. *Id.* at 511; Virginia E. Hench, Essay, *When Less is More-Can Reducing Penalties Reduce Household Violence?*, 19 U. HAW. L. REV. 37, 38 (1997); *Children and Domestic*

abused are at a “high risk for alcohol and drug use, sexual[ly] acting out, running away, isolation, loneliness, fear, and suicide.”<sup>73</sup>

Most experts agree that violence is a “‘learned behavior’ and ‘much of that learning takes place in the home.’”<sup>74</sup> Research also shows that biological factors are a significant predictor of a child’s propensity to become violent in the future.<sup>75</sup> The interplay between biological and environmental factors helps to predict a child’s propensity to become violent.<sup>76</sup> Understanding these various factors may help to better understand and address the ongoing cycle of violence.

### 1. Biological Factors as a Means of Predicting Violent Behavior

While domestic violence affects both sexes significantly, perpetrators of domestic violence tend to be male.<sup>77</sup> Evolutionary psychologists posit that this gender difference in violence is derived through the interplay of “both biological and environmental factors.”<sup>78</sup> Gender differences in vio-

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*Abuse: Effects on Children*, MUJERES LATINAS EN ACCIÓN, <http://www.mujereslatinasenaccion.org/Effects%20on%20Children%201.html> (last visited Dec. 21, 2010); *Information on Domestic Violence*, CLACKAMAS WOMEN’S SERVICES, <http://www.cwsor.org/impact.htm> (last visited Dec. 21, 2010).

73. Pauline Quirion et al., *Protecting Children Exposed to Domestic Violence in Contested Custody and Visitation Litigation*, 6 B.U. PUB. INT. L.J. 501, 511 (1997) (indicating that there is a high correlation between children in domestic abuse environments and criminal activity).

74. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 248 (1999) (quoting AM. PSYCHOLOGICAL ASS’N, *VIOLENCE AND THE FAMILY: REPORT OF THE APA PRESIDENTIAL TASK FORCE ON VIOLENCE AND THE FAMILY* 17 (1996)).

75. See Molly J. Walker Wilson, *An Evolutionary Perspective on Male Domestic Violence: Practical and Policy Implications*, 32 AM. J. CRIM. L. 291, 322 (2005) (discussing the results that evolutionary psychologists have contributed to the research of domestic violence cases).

76. Andreas Reif et. al., *Nature and Nurture Predispose to Violent Behavior: Serotonergic Genes and Adverse Childhood Environment*, 32 NEUROPSYCHOPHARMACOLOGY 2375, 2375 (2007), available at <http://www.psychobiologie.uni-wuerzburg.de/publications/pdf/reifetal2007nature.pdf> (finding a relationship between genetics and adverse parenting in creating a predisposition toward violent behavior). Several studies suggest that genes may not directly influence violent behavior directly, but rather genetic composition may have bearing on susceptibility or resistance to stressful environmental experiences. Sara R. Jaffee et. al, *Nature x Nurture: Genetic Vulnerabilities Interact with Physical Maltreatment to Promote Conduct Problems* (2005), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2768347/pdf/nihms143083.pdf>. When genetically predisposed and vulnerable children are subjected to abuse, early conduct disorders are likely to emerge. *Id.*

77. Molly J. Walker Wilson, *An Evolutionary Perspective on Male Domestic Violence: Practical and Policy Implications*, 32 AM. J. CRIM. L. 291, 292 (2005).

78. *Id.* at 298 (examining evolutionary psychology’s emphasis on biological predispositions, as compared to other theories of domestic violence). Evolutionary psychology promotes the belief that any kind of behavior can be explained on several different levels and

lent behavior can be explained “in terms of [their] role as [ ] mechanism[s] for assuring reproductive success.”<sup>79</sup> Because the means of assuring reproductive success are different for men and women, some evolutionary psychologists suggest that men are predisposed to resort to violence to meet their unique reproductive goals.<sup>80</sup> Also, according to the same theory, females are more invested in their offspring because of their primary goal of gestation.<sup>81</sup> Men, on the other hand, are more invested in spreading their seed “[i]n order to secure a place for [their] genes in future generations.”<sup>82</sup> The mother knows that she is giving birth to her child while the father may be unsure whether that child is his genetic offspring.<sup>83</sup> To put it succinctly, maternity is assured, whereas paternity is not.<sup>84</sup> The male’s quest for “paternity assurance” makes him more likely to resort to domination, control, and sexual jealousy to maximize his chances of reproduction.<sup>85</sup> The male’s sexual jealousy can manifest itself in severe violence against the woman and children in that home.<sup>86</sup>

Evolutionary psychologists also attempt to explain the proportionately high rate of child abuse committed by stepparents through the theory of “paternal assurance.”<sup>87</sup> Because the child is not that stepparent’s genetic

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pays particular credence to the idea of evolutionary history: the concept that evolutionary constructs, like natural selection or survival of the fittest, play major roles in directing a person’s present behavior and actions. *Id.* at 295–96. The main difference between an evolutionary approach to explaining violence and alternate behavioral theories is the heavy emphasis placed on “the biological basis of behavior.” *Id.* at 297. Other theories, such as the social science or feminist approaches, concentrate instead on cycles of abuse or on power disparities within a relationship, respectively, to explain violent behavior. *Id.* at 296–97.

79. *Id.* at 295 (presenting biological differences as an evolutionary explanation for the distinct gender roles in relationships and abuse).

80. *Id.* at 295–96 (explaining the biological differences in males and females and its importance in the study of domestic violence).

81. *Id.* at 295–96 (identifying the behaviors that have become normal for the female sex); see Cheryl Hanna, *Can a Biological Inquiry Help Reduce Male Violence Against Females? Or What’s a Nice “Gal” Like Me Doing at a Conference Like This?*, 22 VT. L. REV. 333, 341 (1997) (describing relationship that women carry with their offspring).

82. Molly J. Walker Wilson, *An Evolutionary Perspective on Male Domestic Violence: Practical and Policy Implications*, 32 AM. J. CRIM. L. 291, 299 (2005) (exploring male aggression as an evolutionary way of ensuring reproductive success).

83. *Id.* at 296 (summarizing the different concerns that men and women may have involving the birth of their children).

84. *Id.*

85. *Id.* at 296, 298–99 (portraying some of the methods used across the globe to protect a woman’s sexual resources).

86. See *id.* at 300 (exploring the different manifestation of jealousy that males experience).

87. See Molly J. Walker Wilson, *An Evolutionary Perspective on Male Domestic Violence: Practical and Policy Implications*, 32 AM. J. CRIM. L. 291, 298 (2005). Paternal assurance is “the process by which the male of a species guarantees that he is not devoting



offspring, the child may be perceived as a threat.<sup>88</sup> A stepparent has little to gain from caring for that child, in fact, “he may actually have something to lose.”<sup>89</sup>

Possessing a comprehensive knowledge of these genetic differences and biological factors can help professionals who interact with victims of family violence identify risk factors for future violence and help tailor a more precise, effective solution.<sup>90</sup> While evolutionary theory may provide insight to a person’s propensity to become violent, a child’s violent environment is also a significant factor in predicting a person’s propensity to engage in violence later in life.<sup>91</sup>

## 2. Environmental Factors and Learned Violence

Research shows that “domestic violence has an environmental effect on children’s behavior problems independent of genetic effects.”<sup>92</sup> One study found that “[m]inors between the ages of nine and twelve who have been reported as abused or neglected are sixty-seven times more likely to be arrested than other minors.”<sup>93</sup> Besides producing poor social role-modeling, abuse can even alter the brain’s chemistry.<sup>94</sup> Furthermore,

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valuable resources to supporting juveniles who are not genetically his own offspring.” *Id.* There is a dramatic increase in the probability of child being abused when that child lives with a biological and non-biological parent, than when the child lives with its two biological parents. *Id.* at 312. This increase in maltreatment is not limited to the aspect of abuse by the stepparent. *Id.* Children living with stepparents are significantly more likely to be murdered, abused, malnourished, and generally maltreated. *See id.* These notions do not attempt to belittle the fact that biological parents are capable of committing the same actions against their own children, but the observations are that the chances of them happening are far greater in the presence of a step or non-biological parent. *See id.* at 313.

88. *Id.* at 300 (explaining the basis for a “threat” imposed by a stepchild).

89. *Id.* at 314 (comparing infanticide behavior in animal species to stepparent abuse within the parameters of domestic violence).

90. Jane Rutherford, *Community Accountability for the Effect of Child Abuse on Juvenile Delinquency in the Brave New World of Behavioral Genetics*, 56 DEPAUL L. REV. 949, 957, 960 (2007) (addressing the difficulties of an effective treatment for children).

91. *See id.* at 976 (discussing intergenerational transmission of violence).

92. *Id.* (quoting Sara R. Jaffee et al., *Influence of Adult Domestic Violence on Children’s Internalizing and Externalizing Problems: An Environmentally Informative Twin Study*, 41 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1095, 1100 (2002)) (discussing the consequences of exposure to abuse on aggression). Biological interventions can have an effect in mitigating aggression; however, it is often hard to medicate adolescents. *Id.* at 960. Since a teenager’s brain is not fully mature, a teenager will not respond to medication like an adult will, and certain medications are potentially more harmful for teenagers than for adults. *Id.*

93. *Id.*

94. *Id.* (noting the effects of violence on the brain).

heritability studies have confirmed that an individual's environment significantly impacts aggression and delinquency.<sup>95</sup>

According to criminologist Lonnie Athens, violence progresses in [sequential] stages, from "brutalization" to "belligerency" to "violent performances" and, finally, to "virulency."

Brutalization, the first stage of the process, occurs when individuals are treated cruelly by key members of intimate social groups, such as families, gangs, or cliques, and can occur in three ways: "violent subjugation, personal horrification and violent coaching." Subjugation occurs when an intimate authority figure, like a parent or a gang leader, uses violence to enforce obedience. At some point the child becomes fearful and submits, but then becomes humiliated and angry. Horrification occurs when children witness violence against another intimate like a sibling or a parent: "Violent subjugation of someone cherished [is] . . . 'exceedingly traumatic for the subject.'" The child feels obligated to try to protect his loved one but is powerless to do so. Feeling both impotent and afraid fuels both rage and shame. Violent coaching occurs when an authority figure encourages the minor to act violently. The authority figure belittles any attempts minors make to smooth over conflicts or flee. Children are taught that it is their duty to stand up for themselves and to be prepared to physically attack others when necessary. The authority figure often tells stories glorifying those who triumph in physical fights. Sometimes, especially within gangs, the coaching is coercive. If the minor does not act aggressively toward an outsider, he will be a victim of the gang.<sup>96</sup>

Science supports this notion of learned violence through studies which document notable differences in the brain activity of violent individuals and nonviolent individuals.

Individuals who are exposed to violence adapt to that environment in a variety of ways, including the release of stress hormones in the

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95. Jane Rutherford, *Community Accountability for the Effect of Child Abuse on Juvenile Delinquency in the Brave New World of Behavioral Genetics*, 56 DEPAUL L. REV. 949, 976-77 (2007) (footnotes omitted) (examining the effects of an abusive environment on an individual's behavior). Heritability refers to genetic contributions to specific conditions or behaviors. *Id.* at 968.

96. *Id.* at 979-80 (footnotes omitted) (discussing the theory that violence progresses in various stages). Scholars assert that the stages of violence are predictable. *Id.* at 979. However, it is not inevitable that an individual will continually progress to the later stages of violence. *Id.* These scholars contend that "violence is a learned behavior and that the learning can be interrupted. *Id.*; see also RICHARD RHODES, *WHY THEY KILL: THE DISCOVERIES OF A MAVERICK CRIMINOLOGIST* 136 (1999).

body and brain that increases the likelihood of a fight or flight response. The cyclical exposure to these chemicals over time changes both the biochemistry and the anatomy of the brain. Specifically, functional MRIs of individuals who have experienced long-term exposure to stress show increased activity in the amygdala, the part of the brain that governs strong emotions. This activity is experienced as a powerful internalized fear that generates anger. Simultaneously, there is decreased activity in the prefrontal lobe, which normally operates to smooth out emotional impulses. So at the very time that stress hormones are causing the amygdala to generate powerful sensations of fear and anger, the frontal lobe that helps an individual control himself shuts down, significantly increasing the likelihood that fear and anger will be manifested in aggressive behavior. When the individuals involved are teens with immature prefrontal lobes, the lack of impulse control is even stronger. Hence, the combined effect of exposure to violence and the normal immaturity of the prefrontal lobe make it extremely difficult for victimized adolescents to control their aggressive impulses.<sup>97</sup>

Thus, adolescents who are exposed to violence have a greater tendency to perceive language, gestures or other behaviors as threats, and to respond angrily and impulsively, due to the altered structure of their amygdalae.<sup>98</sup> Because teens naturally have underdeveloped prefrontal lobes, young people who have experienced violence often find it impossible to maintain control of their impulses.<sup>99</sup>

Researchers can better comprehend the gravity of domestic violence on children by analyzing the three stages of violence.<sup>100</sup> As indicated, environmental violence has been shown to irritate one's emotional state and decrease one's ability to control impulses.<sup>101</sup>

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97. Jane Rutherford, *Community Accountability for the Effect of Child Abuse on Juvenile Delinquency in the Brave New World of Behavioral Genetics*, 56 DEPAUL L. REV. 949, 977-78 (2007) (footnotes omitted) (discussing the effects of violence on the brain).

98. *Id.* at 978.

99. *Id.*

100. Laurie Vargas et al., *Domestic Violence and Children*, AM. COUNSELING ASSOC., at 67, <http://www.counseling.org/Resources/Library/VISTAS/vistas05/Vistas05.art13.pdf> (opining on the greater chance of success with counseling on children who have been involved in domestic violence through an examination of their situation at home).

101. Jane Rutherford, *Community Accountability for the Effect of Child Abuse on Juvenile Delinquency in the Brave New World of Behavioral Genetics*, 56 DEPAUL L. REV. 949, 952 (2007) (comparing a child's brain development to brakes on a car in the context of emotional processes). Like the underdeveloped prefrontal lobe of the brain, brakes in a car go from one extreme to another, unable to effectively slow down the car. *Id.* at 953.

#### IV. FAMILY AND YOUTH VIOLENCE IN TEXAS

In Texas, there are nearly 200,000 reported incidents of family violence each year.<sup>102</sup> In 2009, 111 abused women were killed by their intimate partner.<sup>103</sup> For those who survived the abuse, approximately twelve thousand adults and sixteen thousand children received shelter from abusive relationships.<sup>104</sup> Furthermore, approximately three-fourths of Texans have experienced domestic violence; 31% of Texans reported being victims of severe abuse.<sup>105</sup>

As previously discussed, children exposed to domestic violence are more likely to engage in delinquent behaviors, and thus are more likely to enter the juvenile justice system for violent and nonviolent crimes.<sup>106</sup> The Texas juvenile justice system governs youth between ten and sixteen years old, while the adult justice system governs youths who commit offenses when they are seventeen years or older.<sup>107</sup> A July 2010 report entitled, "The State of Juvenile Probation Activity in Texas: Calendar Year 2008," shows that Texas juvenile probation departments received 99,276 formal referrals; of those, a total of 1,718 juveniles were committed to the Texas Youth Commission (TYC) during 2008.<sup>108</sup> The Texas Youth Commission website notes that the young people in TYC "are the state's most serious or chronically delinquent offenders."<sup>109</sup> For fiscal year 2010, 52% of new arrivals to TYC had committed violent offenses.<sup>110</sup> These high-

102. See TEX. COUNCIL ON FAMILY VIOLENCE, FAMILY VIOLENCE IN TEXAS 2009 (2009), available at [http://www.tcfv.org/wp-content/uploads/2007/10/tcfv\\_stats20091.pdf](http://www.tcfv.org/wp-content/uploads/2007/10/tcfv_stats20091.pdf); Texas Council on Family Violence, *Abuse in Texas*, <http://www.tcfv.org/resources/abuse-in-texas/> (last visited October 9, 2010).

103. TEX. COUNCIL ON FAMILY VIOLENCE, FAMILY VIOLENCE IN TEXAS 2009 (2009), available at [http://www.tcfv.org/wp-content/uploads/2007/10/tcfv\\_stats20091.pdf](http://www.tcfv.org/wp-content/uploads/2007/10/tcfv_stats20091.pdf).

104. *Id.* In 2009, about 11% of adults who sought shelter were turned away due to the lack of space available. *Id.* Approximately 35,000 adults and 16,000 children in Texas receive additional help outside the form of shelter, such as counseling and legal services. *Id.*

105. *Abuse in Texas*, TEX. COUNCIL ON FAMILY VIOLENCE, <http://www.tcfv.org/resources/abuse-in-texas/> (last visited Dec. 15, 2010) (illustrating the prevalence and attitudes toward domestic violence in Texas in 2002).

106. See Min Kang, *Parents as Scapegoats*, 16 J. CONTEMP. LEGAL ISSUES 15, 17 (2007) (discussing the effect of violence in the home on children).

107. TEX. JUV. PROB. COMM'N, THE STATE OF JUVENILE PROBATION ACTIVITY IN TEXAS: CALENDAR YEAR 2008 at 5 (2010), available at <http://www.tjpc.state.tx.us/publications/reports/RPTSTAT2008.pdf> (explaining that the juvenile justice system will only have jurisdiction over seventeen-year-olds if they committed the offense when they were sixteen).

108. *Id.* at 7.

109. *Who Are TYC Offenders?*, TEX. YOUTH COMM'N, [http://www.tyc.state.tx.us/research/youth\\_stats.html](http://www.tyc.state.tx.us/research/youth_stats.html) (last updated Dec. 2, 2010) (emphasizing that the juveniles sent to TYC are high risk youth due to the potential violent behavior they can exhibit).

110. *Id.*

risk juvenile offenders often have a history of child abuse or exposure to ongoing violence.<sup>111</sup> Of the juveniles committed to the TYC in 2010, 72% came from “chaotic environments,” and 36% “had a documented history of being abused or neglected.”<sup>112</sup>

## V. COMBATING JUVENILE VIOLENCE

“Not all brutalized children become violent, but almost all violent juveniles have been brutalized. Unfortunately, when children are incarcerated they are typically further brutalized, horrified, and coached. Gang presence, as well as exposure to a larger, concentrated population of aggressively violent youth, makes these facilities breeding grounds for aggression and violence.”<sup>113</sup>

In attempting to minimize juvenile violence, the adult criminal system may actually contribute to the furtherance of the juvenile’s violent conduct.<sup>114</sup> One aspect of Texas law which may serve as a detriment to older juveniles is the statutory authority that permits judges to decide whether a minor should be tried as a juvenile or tried as an adult.<sup>115</sup> In *Kent v. United States*,<sup>116</sup> the Supreme Court set forth the constitutional due process standards for waiver of minors from the juvenile system to the adult system.<sup>117</sup> Specifically, “a juvenile facing waiver to adult criminal court is entitled to a hearing, which includes access by counsel to records to be considered by the court and a statement of the rationale upon which the juvenile court’s waiver decision is based.”<sup>118</sup> The requirements announced in *Kent* came from the Due Process Constitutional right that provided assistance of counsel. The Court realized that the waiver pro-

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111. See *id.* (providing a statistical description of juvenile delinquents).

112. *Id.* (giving statistics to illuminate the background of TYC offenders in 2009).

113. Jane Rutherford, *Community Accountability for the Effect of Child Abuse on Juvenile Delinquency in the Brave New World of Behavioral Genetics*, 56 DEPAUL L. REV. 949, 980 (2007) (footnotes omitted) (discussing brutalization generally).

114. Erik S. Pitchal, *Judging Children as Children: A Proposal for a Juvenile Justice System*, by Michael A. Corriero, 9 BARRY L. REV. 171, 175 (2007) (explaining the ineffectiveness of trying children based on an adult legal standard). Children tried on an adult legal standard are at higher odds to be arrested again compared to children from the juvenile court system. *Id.* at 175. The specific reason for the discrepancy is unclear. *Id.*

115. TEX. FAM. CODE ANN. § 54.02 (West Supp. 2010).

116. 383 U.S. 541 (1966) (discussing the rights of juveniles when tried as adults).

117. *Id.* at 562 (1966) (asserting that juveniles are afforded the same rights as adults when tried in the adult judicial system).

118. Sarah Steward-Lindsey, *Fulfilling the Promise of Kent: Fixing the Texas Juvenile Waiver Statute*, 34 AM. J. CRIM. L. 109, 114 (2006); accord *Kent v. United States* 383 U.S. 541, 557 (1966) (listing entitlements to juveniles charged as adults).

ceedings deserved appellate review due to the sensitivity of placing juveniles in adult criminal proceedings.<sup>119</sup>

Although the Texas Family Code § 54.02 appears to follow the rule set forth in *Kent*, and purports to include procedural safeguards for the protection of the child, in reality some of these provisions have either been misinterpreted or have deteriorated.<sup>120</sup> In Texas, “[w]aiver of a minor to the . . . adult system may occur without a specific factual finding or a full investigation, and can be determined by the availability of funds in the juvenile system.”<sup>121</sup> In order to reverse the substantial recidivism rates of both adults and juveniles, “a full evaluation of the rehabilitative resources available in the Texas juvenile justice system may demonstrate solutions that [may] reduce the need for waiver and allow waiver decisions to serve the purpose for which they were initially intended—a last resort.”<sup>122</sup>

In order to help lower juvenile recidivism rates, Texas should emphasize a strong monitoring and supervision program for the children departing from the juvenile correction system.<sup>123</sup> Many of the children reentering society have psychological disorders and would benefit from continued therapy programs.<sup>124</sup> Also, stabilization of the recidivism rate could be aided by the provision of family training for the juveniles who themselves are parents.<sup>125</sup> Additionally, ensuring competent legal representation for each juvenile may also be necessary to adequately represent the juvenile’s best interest at all stages of the investigation. Attorneys

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119. Sarah Steward-Lindsey, *Fulfilling the Promise of Kent: Fixing the Texas Juvenile Waiver Statute*, 34 AM. J. CRIM. L. 109, 114 (2006) (reviewing the *Kent* holding that all waiver orders must be given with a statement of the reasons for the waiver).

120. Annotation, *Annotated Legal Bibliography on Gender*, 15 CARDOZO J.L. & GENDER 383, 399 (2009) (reviewing Sarah Steward-Lindsey, *Fulfilling the Promise of Kent: Fixing the Texas Juvenile Waiver Statute*, 34 AM. J. CRIM. L. 109, 114 (2006)).

121. *Id.*; see TEX. FAM. CODE ANN. § 54.02 (West Supp. 2010).

122. Sarah Steward-Lindsey, *Fulfilling the Promise of Kent: Fixing the Texas Juvenile Waiver Statute*, 34 AM. J. CRIM. L. 109, 126 (2006) (advocating a policy change that will shift Texas’ approach to the juvenile justice system by giving rehabilitative resources that are in the child’s best interests).

123. See HOWARD N. SNYDER & MELISSA SICKMUND, OFFICE OF JUV. JUST. AND DELINQ. PREVENT., JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 233 (2006), available at <http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/NR2006.pdf> (pointing out the many challenges faced by juvenile offenders reentering society after incarceration).

124. *Id.* (expressing the need for psychological counseling for the juveniles released from a correctional facility). Roughly 70% of juvenile offenders report experiencing psychological problems. *Id.* Of those experiencing psychological problems, 80% express a lack of anger-management skills and more than 20% claim to have formerly attempted suicide. *Id.*

125. *Id.* (illuminating the need to educate juvenile offenders how to manage a family). Because many of these juveniles lacked quality parenting at home, they would benefit from learning to raise a child and manage a family of their own. *Id.*

play a vital role in ensuring the decisions made by the court are fair, accurate, and appropriate.<sup>126</sup> Moreover, research shows that the attorney is crucial in both protecting the child's rights, and has the ability to improve the child's life by making the child's well-being a central focus of the litigation process.<sup>127</sup> Furthermore, lawyers "ensure fairness of the dependency process, contribute to conserving judicial resources, and support the state's fiscal interests."<sup>128</sup>

Over forty years have passed since the Supreme Court held in *In re Gault* that a juvenile has a right to counsel during delinquency proceedings<sup>129</sup> and there remains a strong need for quality legal representation today.<sup>130</sup> Because juveniles inherently lack maturity, responsibility, and knowledge of court procedure, it is important for juvenile offenders to have a right to counsel.<sup>131</sup> By ensuring legal representation for juveniles at all stages of the juvenile court process, as well as limiting the application of waiver, the juvenile justice system may be able to more effectively address the best interest of juveniles and ensure a higher rate of rehabilitation.

## VI. CHANGING AWARENESS

Family violence is "more than simply violence against women."<sup>132</sup> Rather, it is a gateway for future violence and abuse within the family

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126. LaShanda Taylor, *A Lawyer for Every Child: Client-Directed Representation in Dependency Cases*, 47 FAM. CT. REV. 605, 623 (2009) (summarizing the key aspects of an attorney's role in child dependency cases).

127. *Id.*

128. *Id.* (evaluating the attorney's role in the judicial process of child dependency cases).

129. *In re Gault*, 387 U.S. 1, 36–37 (1967) (holding assistance of counsel is "essential for the determination of delinquency, carrying with it the awesome prospect of incarceration in a state institution until the juvenile reaches the age of 21"). According to the Supreme Court, "[t]he juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it." *Id.* (footnote omitted).

130. See Marsha Levick & Neha Desai, *Still Waiting: The Elusive Quest to Ensure Juveniles a Constitutional Right to Counsel at All Stages of the Juvenile Court Process*, 60 RUTGERS L. REV. 175, 175 (2007) (explaining the current state of a juvenile's right to counsel is riddled with disparities and incongruities between state and local laws).

131. *Id.* at 182 (arguing that juveniles must receive legal counsel at all stages of the criminal justice process).

132. Leigh Goodmark, *From Property to Personhood: What the Legal System Should Do for Children in Family Violence Cases*, 102 W. VA. L. REV. 237, 240 (1999) (detailing the abuser's impact on the family dynamics which results in dysfunction for all members of the household).

and future generations.<sup>133</sup> Greater awareness and an increased understanding of the process of violence and predictive factors are essential to combat the epidemic of violence in our society.<sup>134</sup>

Health care professionals who treat victims of family violence may be unaware of the complexities and factors of intimate violence.<sup>135</sup> As a result, they often “fail to correctly identify the signs of abuse.”<sup>136</sup> Police departments have been criticized for a “lack of responsiveness to domestic violence calls,” rarely making arrests in such situations, even when the victim of abuse has obtained a prior court protective order.<sup>137</sup> Police should be more proactive in making arrests and treating domestic violence with the utmost urgency.<sup>138</sup> If left untreated, it will only lead to

133. CHILD. DEF. FUND, OHIO, *Children Who Witness Domestic Violence*, ISSUE BRIEF, October 2009, at 1, available at <http://cdf.childrensdefense.org/site/DocServer/children-who-witness-domestic-violence-ohio.pdf?docID=9961> (describing the tendency of children who were victims of family abuse to still be subject to the detrimental effects of abuse as adults).

134. See generally Edna B. Foa et al., *Psychological and Environmental Factors Associated With Partner Violence*, 1 TRAUMA, VIOLENCE, & ABUSE 67 (2000) (exploring the different variables associated with the continuation and prevention of partner violence). The psychological and environmental models are “designed to provide a framework for developing research that will enhance the understanding about women’s influence on the course of partner violence and, in turn, will inform interventions aimed at helping women reduce violence in their lives.” *Id.* More specifically, a closer analysis of the environmental factors will help policy makers allocate funding to the proper resources such as legal services or battered women’s shelters and provide mental health professionals with a better understanding of a battered spouse’s psychosis. *Id.* at 83.

135. See Betsy McAlister Groves, *Mental Health Services for Children Who Witness Domestic Violence*, 9 FUTURE CHILD. 122, 122–24 (1999) (announcing a growing field of mental health services to help combat the deleterious effects of children exposed to domestic violence). “To respond properly to these children, personnel in schools, health and mental health care settings must develop and implement guidelines for screening and responses if a child discloses domestic violence.” *Id.* at 124. A child’s response to domestic violence depends on a variety of factors, such as: the child’s age, the child’s proximity to the violence, or the frequency of the child’s exposure to the abuse. *Id.* at 123. Some children may internalize their feelings and become anti-social, while others lash out and exert aggressive behavior. *Id.*

136. Molly J. Walker Wilson, *An Evolutionary Perspective on Male Domestic Violence: Practical and Policy Implications*, 32 AM. J. CRIM. L. 291, 318 (2005) (discussing flaws in hospital procedures that can permit spousal abuse to go undetected). Medical protocols, especially within an emergency room environment, often fail to identify signs of spousal abuse. *Id.* at 318–19.

137. *Id.* at 319 (identifying existing police procedures as another way spousal abuse is unintentionally allowed to continue).

138. Evolutionary theory could prove helpful in aiding police to make strategic arrests to prevent abuse. *Id.* at 305. There are at least four clear factors that correlate to a man’s propensity to abuse his partner: (1) being unemployed; (2) tending towards sexual jealousy; (3) having a partner who is relatively young, i.e. of childbearing age; and (4) young children from that partner’s previous relationship. Molly J. Walker Wilson, *An Evolution-*



further violence and abuse within that family.<sup>139</sup> Studies show that placing an abuser in jail for a period of time may not only prevent abuse-related homicide, but might also deter further harm to a child when the abuser returns home.<sup>140</sup> Additionally, “courts are often a large part of the problem.”<sup>141</sup> Due to the strong joint custody presumption, courts are hesitant to alter joint custody, even with a history of family violence.<sup>142</sup> “The tepid response of the legal system to the domestic violence crisis means that many brutally violent men, even if they are arrested, end up being sent home with a stern warning and court-ordered treatment.”<sup>143</sup>

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*ary Perspective on Male Domestic Violence: Practical and Policy Implications*, 32 AM. J. CRIM. L. 291, 322 (2005). A police officer could conceivably identify some of these known risk factors and more accurately utilize arrests in a potentially violent situation. *Id.* at 305.

139. Allison J. Cambria, Comment, *Defying a Dead End: The Ramifications of Town of Castle Rock v. Gonzales on Domestic Violence Law and How the States Can Ensure Police Enforcement of Mandatory Arrest Statutes*, 59 RUTGERS L. REV. 155, 163–65 (2006) (understanding the need for mandatory arrest statutes that begin with understanding the disposition of the batterer).

140. Molly J. Walker Wilson, *An Evolutionary Perspective on Male Domestic Violence: Practical and Policy Implications*, 32 AM. J. CRIM. L. 291, 319 (2005) (considering the benefits accompanying arrest as a means of diffusing potential domestic violence).

141. *Id.* at 320. Where awarding joint custody of children in a divorce might seem like a desirable compromise, it can serve to compel contact between an abuser and a victim. *Id.* Considering that the time period immediately following separation is when a victim of abuse is at the most risk of being attacked by her abuser, an otherwise reasonable joint custody decision can serve to increase the risk of serious harm. *Id.* Some states require spousal abuse to be considered in divorce proceedings before child custody is assigned, but many still lack a statutory requirement that could protect victims this way. *Id.*

142. See, e.g., Laurel A. Kent, *Addressing the Impact of Domestic Violence on Children: Alternatives to Laws Criminalizing the Commission of Domestic Violence in the Presence of a Child*, 2001 WIS. L. REV. 1337, 1361–62 (2001) (noting that certain states like Wisconsin have a presumption for joint custody in child custody disputes without considering the presence of domestic violence in the household). But see Nancy Ver Steegh, *Differentiating Types of Domestic Violence: Implications for Child Custody*, 65 LA. L. REV. 1379, 1422–23 (2005) (noting that several states have implemented a rebuttable presumption to joint custody when there is evidence of domestic violence). “As of 2001, sixteen states plus the District of Columbia had adopted rebuttable presumptions regarding custody awards to batterers. Some of the states apply the presumption to all types of custody while others apply it only to joint custody requests.” Nancy Ver Steegh, *Differentiating Types of Domestic Violence: Implications for Child Custody*, 65 LA. L. REV. 1379, 1423 (2005).

143. Molly J. Walker Wilson, *An Evolutionary Perspective on Male Domestic Violence: Practical and Policy Implications*, 32 AM. J. CRIM. L. 291, 320 (2005) (discussing how courts utilize a social learning theory approach to domestic violence). Social learning theory as used within the legal system tends to focus more on an offender’s treatment, rather than punishment, as a main component of a response to domestic abuse. *Id.* As such, judges frequently tend to sentence abusers to probationary punishment rather than incarceration. *Id.* Unfortunately, this approach fails to provide the protection that incarceration offers a potential victim of domestic violence—the immediate removal of the abuser from his victim. *Id.*

The efficacy of crime reduction policies may be significantly impaired by an over-emphasis on “personal choice” rather than a broad approach to ameliorate issues that may be geographically concentrated such as high unemployment, lack of early education, little community engagement, and domestic violence.<sup>144</sup> The implementation of more comprehensive rehabilitative and legal measures is imperative to protect the best interests of children who are exposed to violence.

Both biological and environmental factors play a role in a child’s development, and Americans should take the initiative to change the cultures and laws that allow children to be brutalized.<sup>145</sup> Such changes should include the following:

1. Recognize that children have a constitutional right to be safe.
2. Acknowledge that the government has a duty to protect children.
3. Create a § 1983 action to permit federal claims against state agencies that are grossly negligent in protecting children.
4. Provide private parties with standing to enforce legislation designed to protect children.
5. Create tort claims against state actors who are grossly negligent in protecting children.
6. Create a right for limited classes of private individuals to intervene in cases of abuse and domestic violence.
7. Require all states to provide welfare services to all children regardless of age or prior history of delinquency.

New government policies must also help change the culture of abuse:

1. Invest more resources in child protection, intervention, rehabilitation, and parent education.
2. Mount a campaign to educate the public on the consequences of abuse and violence.
3. Mount a campaign to educate the public on how to intervene effectively when they see abuse.<sup>146</sup>

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144. Adam Benforado, *The Geography of Criminal Law*, 31 CARDOZO L. REV. 823, 898 (2010) (arguing that physical space is an important element in all aspects of crime and social oblivion to spatiality can produce results contrary to our purported values).

145. Jane Rutherford, *Community Accountability for the Effect of Child Abuse on Juvenile Delinquency in the Brave New World of Behavioral Genetics*, 56 DEPAUL L. REV. 949, 994 (2007) (noting potential communal changes in relation to youth violence).

146. *Id.* at 994–95 (2007) (listing potential governmental changes that need to be implemented in order to curtail abuse). It is not unusual for individuals who witness child abuse to be hesitant to intervene. *Id.* at 993. Some fear for their own safety while others fear that the child may suffer retaliatory effects, but showing concern may potentially empower a child by letting them know that others are concerned for their well-being. *Id.* at 993–94.

## VII. CONCLUSION

Family violence significantly impacts the prevalence of youth violence.<sup>147</sup> Children who enter the juvenile justice system are likely to reoffend and become part of the adult criminal system.<sup>148</sup> The system fails to adequately rehabilitate many of our youths, leaving them trapped in a destructive cycle of dysfunction. In order to effectively reform the current system to better combat the ongoing cycle of violence, it is essential to promote awareness and educate society about the consequences of abuse and violence.<sup>149</sup>

By addressing the issues of family violence when they first surface, there will be a decreased likelihood for future violent behavior from both the batterer and the child.<sup>150</sup> Professionals who interact with victims of abuse or perpetrators of violence should pursue continued education of the various biological and environmental factors that may predict future violence.<sup>151</sup> Each individual affected by violence must be assessed on a case by case basis, with a thorough and comprehensive analysis of the risk factors present. Furthermore, the system needs to focus more on the individual's needs.<sup>152</sup> Through funding and implementation of extensive rehabilitative programs, such as counseling, meaningful community service, and educational opportunities for juvenile offenders, the system may be able to better assist juveniles with their transition into free society and

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147. NAT'L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FACTS (July 2007), [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf).

148. OFFICE OF JUV. JUST. AND DELINQ PREVENT., GUIDE FOR IMPLEMENTING THE COMPREHENSIVE STRATEGY FOR SERIOUS, VIOLENT, AND CHRONIC JUVENILE OFFENDERS 1-3 (1995), available at <http://www.ncjrs.gov/pdffiles/guide.pdf> (providing statistical analysis of chronic juvenile offenders).

149. See *id.* at 4-6 (analyzing co-occurring behavioral problems and the risk factors that contribute to violent, chronic juvenile offenders).

150. Stephen J. Bavolek, *The Nurturing Parenting Programs*, OFFICE JUV. JUST. AND DELINQ. PREVENTION 3-8 (Nov. 2000), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/172848.pdf> (announcing available programs for a violence-free parenting style). According to the Nurturing Parenting Programs, common behaviors can be found in abusive parents that include inappropriate expectations for the child, the inability to understand child's needs, and the belief in physical punishment. *Id.* at 3-5.

151. See *id.* at 1-6 (Nov. 2000), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/172848.pdf> (analyzing the four abusive patterns of parenting styles in more detail and how it effects a child's brain development).

152. See generally CINDY L. MILLER-PERRIN & ROBIN D. PERRIN, CHILD MALTREATMENT: AN INTRODUCTION 99 (Sage Publ'ns, Inc. 2d. ed. 2007) (considering that the appropriate method of addressing child abuse victims depends on the way the problem is framed).

decrease the chances of reoffending.<sup>153</sup> By implementing these suggestions, society may be able to better combat the ongoing issue of violence and better protect our future generations.

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153. Cf. *Abuse in Texas*, TEX, COUNCIL ON FAMILY VIOLENCE, <http://www.tcfv.org/resources/abuse-in-texas/> (last visited Dec. 15, 2010) (evaluating the attitude toward domestic violence in Texas).